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No. 93-799

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

STANDARD INSURANCE COMPANY,
Petitioner,

v.

JEROME SAKLAD,
Respondent.

On Petition for Writ of Certiorari to the Court of Appeals of the State of Oregon

MOTION FOR LEAVE TO FILE JOINT *AMICI CURIAE* BRIEF

JOINT *AMICI CURIAE* BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI FILED BY STANDARD INSURANCE COMPANY

I. FRANKLIN HUNSAKER
Counsel of Record
CHRYS A. MARTIN
BULLIVANT, HOUSER, BAILEY,
PENDERGRASS & HOFFMAN
300 Pioneer Tower
888 S.W. Fifth Avenue
Portland, OR 97204
(503) 228-6351

Attorneys for Movants and *Amici Curiae* American Council of Life Insurance and Defense Research Institute

(Additional Counsel listed on inside front cover)

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RICHARD E. BARNSBACK
PHILLIP E. STANO
AMERICAN COUNCIL OF LIFE INSURANCE
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 624-2183

Of Counsel for Movant and *Amicus Curiae*
American Council of Life Insurance

JOHN H. HOLMES
HOLMES, FOLAWN & RICKLES
#1850 Benj. Franklin Plaza
One Southwest Columbia
Portland, OR 97258
(503) 229-1850

Of Counsel for Movant and *Amicus Curiae*
Defense Research Institute

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American Council of Life Insurance ("ACLI") and Defense Research Institute ("DRI") (hereinafter "Movants") hereby jointly move this Court, pursuant to Rule 37.2 of the Rules of this Court, for leave to file a joint *amici curiae* brief in support of the Petition for Writ of Certiorari filed in this matter on November 19, 1993 by Standard Insurance Company ("Petitioner"). If such leave is granted, a Joint *Amici Curiae* Brief is attached hereto and submitted with this Motion. Pursuant to Rule 37.2, this Motion is timely filed in that the Petition for Writ of Certiorari filed in this matter was received by the attorneys for Respondent on November 23, 1993, and this Motion and the attached Joint *Amici Curiae* Brief are being filed within 30 days of that date.

Although Petitioner has consented to the filing of the attached Joint *Amici Curiae* Brief, Movants are unable to state whether Respondent consents to the filing of that Brief in that Movants' attorneys have not attempted to contact Respondent because they have been informed that Respondent may be appearing *pro se* in this Court. However, as of the date of the filing of this Motion, Movants were unable to determine whether Respondent definitely would be appearing *pro se* and therefore their attorneys did not attempt to contact Respondent to see if he would consent to the filing of the Joint *Amici Curiae* Brief.

IDENTITY AND INTERESTS OF *AMICI CURIAE*

The issue presented by the Petition for Writ of Certiorari filed in this matter is whether the Employee Retirement Income Security Act of 1974 ("ERISA") (29 U.S.C. §§ 1001-1461) preempts a state anti-garnishment law [Or. Rev. Stat. § 23.160(1)(j)(C)] insofar as that law conflicts with ERISA's civil enforcement provision. That issue is of great interest to Movants for the following reasons:

1. ACLI is the nation's largest life insurance trade association and has 634 members. ACLI members have 89.9 percent of the life insurance in force in the United States in legal reserve life insurance companies. ACLI members write 92.9 percent of the group life insurance written in Oregon and 91.5 percent of the total group life insurance written in the United States. ACLI members include 422 companies that are licensed to conduct business in Oregon. The issue presented by the Petition for Writ of Certiorari is of great interest to ACLI because of the volume of disability insurance written in Oregon and other states with similar anti-garnishment laws by numerous member companies of ACLI. The ACLI members who administer and underwrite employee welfare

benefit plans will be significantly and adversely impacted by the decision of the Oregon Court if it is not reversed by this Court. The decision will require alteration of the benefit and premium packages the ACLI members are able to offer to employers who establish ERISA plans.

2. DRI is a national, non-profit research and defense trial and insurance attorneys' association whose purposes include increasing the professional skill and knowledge of attorneys, enhancing the services of the legal profession to the public, promoting improvements in the adversary system of jurisprudence, and working for the prompt and fair administration of justice. DRI consists of over 18,000 trial attorneys and more than 400 corporate members nationwide. Of its corporate members, many are insurers of ERISA plans and others maintain insured and uninsured ERISA plans. DRI, like ACLI, is concerned that the Oregon Court's ruling in this matter threatens the insurance industry's efforts to thwart insurance fraud. The battle against insurance fraud is an issue of great concern to DRI and ACLI.

Particularly for the reasons set forth at pages 1-4 of the attached Joint *Amici Curiae* Brief, this case presents an issue of vital importance to Movants and to Movants' members nationwide. Movants believe that the arguments addressed in the attached Joint *Amici Curiae* Brief will assist this Court in determining whether certiorari should be granted. That is particularly true because the resolution of the preemption issue presented by the Petition for Writ of Certiorari will have profound financial and administrative impact on all federally governed ERISA plans in Oregon and in other states with similar anti-garnishment laws if other state courts rule as did the Oregon Court on the preemption issue.

For these reasons, Movants request that this Court grant leave and allow the filing of the attached Joint *Amici Curiae* Brief.

DATED: December 23, 1993.

Respectfully submitted,

I. FRANKLIN HUNSAKER
Counsel of Record
CHRYS A. MARTIN
BULLIVANT, HOUSER, BAILEY,
PENDERGRASS & HOFFMAN

Attorneys for Movants and *Amici Curiae*
American Council of Life Insurance and
Defense Research Institute

RICHARD E. BARNSBACK
PHILLIP E. STANO
AMERICAN COUNCIL OF LIFE INSURANCE

Of Counsel for Movant and *Amicus Curiae*
American Council of Life Insurance

JOHN H. HOLMES
HOLMES, FOLAWN & RICKLES

Of Counsel for Movant and *Amicus Curiae*
Defense Research Institute

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JOINT *AMICI CURIAE* BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI FILED BY STANDARD INSURANCE COMPANY

INTEREST OF *AMICI CURIAE*

Whether ERISA preempts Oregon's anti-garnishment law is an important issue that should be addressed by this Court because it will affect all federally governed ERISA plans in Oregon and in other states with similar laws.

The important issue presented in this matter is whether the Employee Retirement Income Security Act of 1974 ("ERISA") (29 U.S.C. §§ 1001-1461) preempts a state anti-garnishment law [Or. Rev. Stat. § 23.160(1)(j)(C)] insofar as that law conflicts with ERISA's civil enforcement provisions [29 U.S.C. § 1132(a)]. The Oregon Court erroneously ruled that the extremely broad preemptive reach of ERISA repeatedly recognized by this Court somehow is

not broad enough to include Oregon's anti-garnishment law.

That preemption issue warrants review by this Court because the resolution of that issue will have profound financial and administrative impact on all federally governed ERISA plans in Oregon and in other states with similar anti-garnishment laws if other state courts rule as did the Oregon Court on that issue. The decision of the Oregon Court, if not reversed, will thwart the legal responsibility of a fiduciary [such as Petitioner Standard Insurance Company ("Standard")] of a defrauded ERISA plan to recoup losses due to fraud on the plan committed by a plan beneficiary such as Respondent Saklad. That will significantly impact the plan assets of employee welfare benefit plans established by employers and the benefits and premiums for employees covered under such plans.

Because of the volume of disability insurance written in Oregon and other states with similar anti-garnishment laws by numerous member companies of *Amicus Curiae* American Council of Life Insurance ("ACLI"), the issue of whether ERISA's comprehensive federal civil enforcement statutory scheme prevails over Oregon's anti-garnishment law is of great interest to ACLI. The ACLI members who administer and underwrite employee welfare benefit plans will be significantly and adversely impacted by the decision of the Oregon Court if it is not reversed by this Court. That decision will require alteration of the benefit and premium packages the ACLI members are able to offer to employers who establish ERISA plans.

Like ACLI, *Amicus Curiae* Defense Research Institute ("DRI") is concerned that the Oregon Court's ruling threatens the insurance industry's efforts to thwart insurance fraud. DRI has joined the battle against insurance fraud, which is an issue of great concern to DRI and ACLI.

The United States General Accounting Office recently estimated that the cost attributable to health care fraud constituted a 10 percent surcharge of $70 billion to the nation's $700 billion annual health care bill in the 1991-92 fiscal year. If health care fraud such as that committed by Saklad remains unchecked, the estimated cost could reach $100 billion annually by 1995.[1] For example, in Oregon alone the impact of health insurance fraud is a significant factor. In the 1991 calendar year, Oregonians paid over $388 million in health care premiums.[2] While these are only estimates of the amount of health insurance fraud, the cost of fraud undoubtedly is absorbed by both the premium-paying public and insurers.

The decision of the Oregon Court, if not reversed, will adversely impact the cost of employee benefit plans issued in Oregon and will prevent ERISA plan fiduciaries from exercising their right and duty under federal law to remedy fraudulent misappropriation of ERISA plan assets. It will send a message to those, like Saklad, who defraud ERISA plans that in Oregon or other states with similar anti-garnishment laws they have a safe harbor from paying restitution for their fraud.

The dangerous precedent created by the decision of the Oregon Court is not limited to the garnishment issue involved in this matter. The decision of the Oregon Court,

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[1] United States General Accounting Office, *Report to the Chairman, Subcommittee on Human Resources and Intergovernmental Relations, Committee on Government Operations, House of Representatives*, May 1992, p. 1.

[2] American Council of Life Insurance 1992 Life Insurance Fact Book (p. 74), published by ACLI. If the national 10 percent health care fraud surcharge figure is applied to these costs in Oregon alone, approximately $38 million of health insurance premiums is attributable to fraud. The vast majority of these expenses are funded through ERISA plans.

if not reversed, also will create a risk of undermining the uniform federal regulation of ERISA plans that ERISA mandates and that this Court repeatedly has recognized.

ARGUMENT

The decision of the Oregon Court is contrary to decisions of this Court recognizing the extremely broad preemptive reach of ERISA over state laws (like Oregon's anti-garnishment law) insofar as they relate to and conflict with ERISA's civil enforcement remedies.

ERISA established a comprehensive federal statutory scheme designed to provide for the uniform administration of private retirement plans and employee benefit plans. The Oregon Court correctly acknowledged that ERISA includes an extremely broad preemption provision that preempts all state laws that "relate to" any employee benefit plan. 29 U.S.C. § 1144(a).[3]

However, despite the expansive interpretation of the preemption provision repeatedly given it by this Court, the Oregon Court reversed the Orders of the trial court that would have enabled Standard (as the fiduciary of an ERISA plan defrauded by Saklad) to garnish the benefits that Saklad is receiving from another ERISA plan in order to obtain restitution of the benefits fraudulently obtained by Saklad. The Oregon Court either misunderstood or misapplied leading precedent of this Court that supports the Orders of the trial court allowing the garnishment. Standard, as the fiduciary of a defrauded ERISA plan, should be allowed to garnish the benefits of Saklad's

[3] 29 U.S.C. § 1144(a) provides in pertinent part: "Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter *relate to* any employee benefit plan." (Emphasis added)

second ERISA plan notwithstanding Oregon's anti-garnishment law because that law is preempted by ERISA insofar as it would prevent that garnishment.

1.

Because Oregon's anti-garnishment law "relates to" an ERISA employee benefit plan, it is preempted by ERISA.

The Oregon Court acknowledged that the preemptive reach of ERISA repeatedly has been described by this Court to be "broad." However, the Oregon Court erred in ruling that Oregon's anti-garnishment law does not fall within that broad preemptive reach because the state law does not "relate to" ERISA. *Standard Ins. Co. v. Saklad*, 849 P.2d 1150, 1152, *rev. denied*, 858 P.2d 876 (Or. 1993).

This Court consistently has emphasized the broad nature of ERISA's preemption provision in striking down state laws having even an *indirect* connection with or impact on ERISA plans. The ERISA preemption provision has been described by this Court as "conspicuous for its breadth" [*FMC Corp. v. Holliday*, 498 U.S. 52, 58 (1990)], and its language as "deliberately expansive" [*Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 46 (1987); *see also Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 525 (1981)]. In its very recent decision in *John Hancock Life Ins. Co. v. Harris Bank*, No. 92-1074, 1993 U.S. LEXIS 7940, at *9 (Dec. 13, 1993), this Court stated that ERISA "calls for federal supremacy when [ERISA and a state law] cannot be harmonized or accommodated."

This Court has broadly construed the "relates to" language in ERISA's preemption provision to encompass any state statute having *either* a "connection with or reference to" employee benefit plans. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 97 (1983). The Oregon Court, however, incorrectly considered only *one* of those tests in ruling that

ERISA's preemption is not "boundless" and does not apply to Oregon's anti-garnishment law.

The issue in this matter is whether Oregon's anti-garnishment law "relates to" employee benefit plans and is therefore preempted. That answer should be "yes" given this Court's broad interpretation of the "relates to" language and its consistent rulings that even those state laws that only *collaterally* or *indirectly* affect employee benefit plans are preempted by ERISA. *Alessi*, 451 U.S. at 525 ("It is of no moment that New Jersey intrudes indirectly, through a workers' compensation law rather than directly, through a statute called 'pension regulation' "); *Shaw*, 463 U.S. at 100 (New York's human rights and disability benefits law preempted because it dealt with subject matter covered by ERISA and affected employee benefit plans); *Pilot Life Ins. Co.*, 481 U.S. at 47 (law need not be specifically designed to affect employee benefit plans in order to "relate to" the plans; "indirect" effect is sufficient).

This Court repeatedly has rejected efforts to limit preemption to state laws only relating to specific subjects mentioned in ERISA. *See, e.g., Dist. of Col. v. Washington Trade Bd.*, ____ U.S. ____, 113 S. Ct. 580, 121 L. Ed. 2d 513, 520 (1992); *Ingersoll-Rand v. McClendon*, 498 U.S. 133, 138-39 (1990) (Congress did not mean to preempt only state laws specifically designed to affect employee benefit plans); *FMC Corp. v. Holliday*, 498 U.S. at 58 (Pennsylvania anti-subrogation statute preempted by ERISA even though statute did not expressly mention ERISA).[4]

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[4] The effect of Oregon's anti-garnishment law on ERISA plans is comparable to the Pennsylvania anti-subrogation law at issue in *FMC Corp. v. Holliday* that prohibited disability benefit plans from being structured in a manner requiring reimbursement in the event that the injured worker obtained a recovery of medical expenses from a third-party tortfeasor. This Court ruled that the

(Footnote continued on following page)

Furthermore, it is well established under ERISA that state statutes having a significant *economic impact* on employee welfare benefit plans unequivocally "relate to" those plans and are therefore preempted. *E-Systems, Inc. v. Pogue*, 929 F.2d 1100 (5th Cir.), *cert. denied*, 112 S. Ct. 585 (1991). In *E-Systems*, the court struck down a Texas tax statute applied to administrators of self-funded ERISA plans, holding that the tax clearly related to the plans because it would have a significant economic impact on them. 929 F.2d at 1103. The court in *E-Systems* relied heavily upon this Court's mandate in *FMC Corp. v. Holliday, supra*, and *Alessi v. Raybestos-Manhattan, supra*, to expansively apply the "relates to" language of ERISA's preemption provision even to those state laws that only *indirectly* affect employee benefit plans.[5] *Id.*

Clearly, Oregon's anti-garnishment law "relates to" and has a profound economic impact on ERISA plans. Like the tax in *E-Systems, Inc. v. Pogue, supra*, Oregon's anti-garnishment law results in a loss to the ERISA plans, thereby increasing premiums and reducing benefits available to plan participants (employees and their dependents).

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[4] *continued*

Pennsylvania law, which precluded ERISA plan providers from seeking reimbursement of benefits through subrogation, interfered with the rights and remedies afforded under ERISA's civil enforcement provision. This Court further ruled that differing state laws affecting the right to seek reimbursement by subrogation would undermine the congressional intent to provide for uniform treatment of welfare benefit plans governed by ERISA. 498 U.S. at 60.

[5] The state statute at issue in *E-Systems*, like Oregon's anti-garnishment law, made no *direct* reference to ERISA. The court in *E-Systems* concluded that the statute *indirectly* regulated and affected ERISA plans and therefore was connected to those plans, resulting in preemption under ERISA's preemption provision. That is significant for the reasons discussed at pages 9-12 below.

Oregon's anti-garnishment law unquestionably "relates to" the two employee benefit plans issued by Standard to Saklad (the plan defrauded by Saklad and also the plan being garnished). The plan assets of the defrauded plan will suffer a severe economic impact in the amount of $367,000 (the amount of benefits fraudulently obtained by Saklad) if Standard is prohibited from garnishing the benefits of the second ERISA plan being paid to Saklad.[6] That will have a profound financial impact on the plan assets of the defrauded plan that are available to pay valid claims of other beneficiaries of that plan. It also will cause an increase in premiums charged under that defrauded plan due to the inability to recoup the plan assets fraudulently obtained by Saklad. Moreover, the anti-garnishment law directly refers to the type of benefits due Saklad under the plan that Standard is attempting to garnish. Finally, ERISA plans that are unable to garnish to recover fraudulently paid claims will have increased administrative costs due to variances in state anti-garnishment laws, and that is clearly against Congress's goal of a uniform civil enforcement scheme under ERISA. *Pilot Life Ins. Co.*, 481 U.S. at 52.[7]

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[6] It is well established that ERISA plan fiduciaries have the right, indeed the fiduciary duty, to recover plan benefits fraudulently obtained by plan participants. *See Ky. Laborers Dist. Council Health & Wel. v. Hope*, 861 F.2d 1003, 1005 (6th Cir. 1988).

[7] This Court has recognized that, consistent with the legislative history of ERISA, ERISA's preemption provision was included "to ensure that plans and plan sponsors would be subject to a uniform body of benefits law; the goal was to minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government[; and that] [o]therwise, the inefficiencies created could work to the detriment of plan beneficiaries." *Ingersoll-Rand*, 498 U.S. at 142; *see also* H.R. Rep. No. 93-533, 93d Cong., 2d Sess. 12 (1973), *reprinted in* 1974 U.S.C.C.A.N. 4650 ("The uniformity of decision which the Act is designed to foster will help administra-

(Footnote continued on following page)

The purpose of ERISA's preemption provision is to avoid conflicting or inconsistent state and local regulation of ERISA plans. The decision by the Oregon Court directly conflicts with that purpose. If not reversed, that decision will frustrate the intent of Congress to provide for nationwide uniformity in the regulation of ERISA plans and increase plans' administrative costs, thereby reducing benefits available to plan participants and their beneficiaries.

2.

In ruling that Oregon's anti-garnishment law is not preempted because it does not expressly refer to ERISA, the Oregon Court misinterpreted and misapplied this Court's controlling decision in *Mackey*.

The Oregon Court erred in ruling that a leading decision of this Court in *Mackey v. Lanier Collections Agency*, 486 U.S. 825 (1988), is distinguishable. The incorrect basis of that ruling was that the state law that this Court in *Mackey* held was preempted expressly referred to ERISA, whereas Oregon's anti-garnishment law does not and therefore is not preempted. *Standard Ins. Co. v. Saklad*, 849 P.2d at 1152.

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[7] *continued*

tors, fiduciaries and participants to predict the legality of proposed actions without the necessity of reference to varying state laws"). Differing state laws that affect the ability of ERISA plan providers to recoup amounts fraudulently paid out under an ERISA-regulated plan would "frustrate plan administrators' continuing obligation to calculate uniform benefit levels nationwide." *FMC Corp. v. Holliday*, 498 U.S. at 60. This Court has recognized that both the administrative procedures and the benefits of a plan could be affected by restrictions imposed by differing state laws on the ability of a plan provider to obtain reimbursement of amounts paid as benefits.

While ERISA's preemptive reach may not be "boundless," as observed by the Oregon Court (*id.*), it certainly is broad enough to preempt Oregon's anti-garnishment law insofar as that law conflicts with ERISA. In ruling otherwise, the Oregon Court misconstrued the controlling decision of this Court in *Mackey*, which compels ERISA preemption of Oregon's anti-garnishment law under the facts of this matter.[8]

The Oregon Court erroneously concluded that *Mackey* is distinguishable on the grounds that the state law in *Mackey* expressly referred to ERISA plans, while Oregon's anti-garnishment law does not. That is a flawed conclusion because, as discussed above, state laws are preempted if they *either* have a "connection with" *or* "reference to" ERISA. *Mackey*, 486 U.S. at 843.

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[8] In *Mackey*, this Court ruled that a Georgia statutory provision expressly exempting ERISA benefits from garnishment was preempted by ERISA. This Court ruled that another provision creating the general right to garnishment was not preempted, as the ERISA enforcement scheme provides that plans can sue and be sued and also allows them to be garnished. The Georgia anti-garnishment law was similar to that of Oregon's. It attempted to exempt ERISA plan-paid benefits from garnishment. This Court in *Mackey* struck down that provision of the state law because it specifically referred to ERISA, but left intact the general garnishment right. The Court held that such an express reference "suffices to bring it within the federal law's preemptive reach." 486 U.S. at 830.

While this Court in *Mackey* invalidated the Georgia anti-garnishment law because it expressly referred to "ERISA plans" and singled out ERISA plans for different treatment, that ruling does not mandate a different result in this matter. This Court in *Mackey* simply addressed the "reference to" provision of the ERISA preemption rule, as the state law specifically mentioned ERISA. Thus, there was no need for this Court in *Mackey* to address the additional prong of the argument applying to "connection with." Furthermore, the "reference to" test does not require use of the magical words "ERISA" or "employee welfare benefit plan" before preemption can occur. *FMC Corp. v. Holliday, supra*; *E-Systems, Inc. v. Pogue, supra.*

The ruling by the Oregon Court simply elevates form over substance. Because Oregon's anti-garnishment law does not expressly use the words "ERISA" or "employee welfare benefit plan," the Oregon Court erroneously concluded that the law is not preempted by ERISA. What the Court ignored, however, is that Oregon's anti-garnishment law, in referring to "compensation of loss of future earnings," does use terms that clearly describe employee benefit plans or plan assets.[9] The only benefits that "future earnings" can refer to are liability benefits (which are covered by ERISA) and workers' compensation.

In order to be preempted, Oregon's anti-garnishment law need not refer specifically to "ERISA" or "employee benefit plans" because, even without a "reference to" ERISA or employee benefit plans, a state law's "connection with" a plan is sufficient for preemption.[10] As discussed above, it is clear that Oregon's anti-garnishment law has such a connection with and indirect reference to ERISA plans because it results in a negative economic impact on them.

There can be no doubt that Oregon's anti-garnishment law has a "connection with" ERISA plans because it would apply in this matter to prohibit garnishment of payments due from an ERISA plan to Saklad to repay another ERISA plan for benefits fraudulently obtained by Saklad. Nor can there be any doubt that a $367,000 loss

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[9] Or. Rev. Stat. § 23.160(1)(j)(C) (the anti-garnishment law) exempts from garnishment "[a] payment in compensation of loss of future earnings of the debtor . . . to the extent reasonably necessary for the support of the debtor and any dependent of the debtor."

[10] *See* Standard's Petition for Writ of Certiorari, pp. 14-22, where Standard discusses this issue and a conflict between the Oregon Court's ruling in this regard and a recent decision of the Tenth Circuit in *Guidry v. Sheet Metal Workers Int'l. Assoc., Local No. 9*, ____ F.3d ____, 1993 U.S. App. LEXIS 28698 (10th Cir. 1993).

of plan assets resulting from Saklad's fraud clearly has a "connection with" the defrauded ERISA plan. Thus, the absence of a direct ERISA reference is irrelevant. The Oregon anti-garnishment law adversely impacts the financial assets of the plan that Saklad defrauded; it will require an increase in premiums by Standard to that plan and will increase administrative costs to ERISA plans due to a lack of uniformity in the ability to collect restitution for benefits fraudulently obtained.

Therefore, Oregon's anti-garnishment law is preempted by ERISA to the extent it applies to ERISA plans, leaving intact the general garnishment law that would allow Standard to garnish the ERISA plan benefits that Saklad is now receiving. Contrary to the ruling of the Oregon Court, this Court's decision in *Mackey* is not distinguishable from this matter. The *effect* of both the Oregon and Georgia anti-garnishment laws is identical. Both "relate to" an ERISA plan; the Georgia law because it specifically referred to ERISA, and the Oregon law because it refers to benefits payable under an ERISA plan. Furthermore, as applied, Oregon's anti-garnishment law has a "connection with" both of the ERISA plans—that which Saklad defrauded and that which Standard is seeking to garnish. Therefore, the attempt by the Oregon Court to distinguish this Court's decision in *Mackey* simply cannot withstand careful scrutiny.

3.

The Oregon Court also misconstrued this Court's decision in *Mackey* in ruling that Congressional silence regarding garnishment of ERISA welfare plan benefits somehow constituted acceptance of laws like Oregon's anti-garnishment law.

The Oregon Court misunderstood and misconstrued this Court's decision in *Mackey* "to mean that the congres-

sional silence concerning garnishment of ERISA welfare plans acknowledged and accepted various state practices concerning garnishment, *including the practice of refusing garnishment.*" *Standard Ins. Co. v. Saklad*, 849 P.2d at 1152 (emphasis added). As discussed above, that portion of a law like Oregon's that prohibits garnishment of ERISA plans is preempted by ERISA, leaving the remainder of such a law intact. In *Mackey*, this Court expressly upheld the remaining Georgia garnishment law's applicability to ERISA plans after striking down the anti-garnishment section. Thus, there can be no question that if the Oregon anti-garnishment law is preempted, the remainder of the garnishment law is applicable.

This Court in *Mackey* concluded that ERISA does not preempt the general garnishment law because Congress did not intend to preclude state laws regarding attachment of ERISA plan benefits:

> In our view, however, certain ERISA provisions, and several aspects of the statute's structure, indicate that Congress did not intend to forbid the use of state-law mechanisms of executing judgments against ERISA welfare benefit plans, even when those mechanisms prevent plan participants from receiving their benefits.

486 U.S. at 831-32. In footnote 6 (*id.* at 831), this Court cited numerous other decisions of various circuit and district courts in which those courts consistently have ruled that ERISA does not preempt the application of state garnishment procedures to ERISA plans.

This Court in *Mackey* acknowledged that ERISA allows employee welfare benefit plans to "sue and be sued." 486 U.S. at 833. Surely that contemplates obtaining and executing on judgments against such plans. This Court noted that Section 514(a) [29 U.S.C. § 1144(a)] (the preemption provision) makes no distinction between plan funds generally and those plan funds due a particular beneficiary:

> If § 514(a) allows a creditor of a plan to employ state-law procedures to attach plan funds (to collect a judgment it has won against the plan)—if such an action does not "relate to" a benefit plan—we do not see how § 514(a) bars a participant's creditor from employing the same state-law mechanisms.

Id. at 836. This Court also noted that where Congress intended to prohibit alienation, it did so specifically in the statute. [Section 206(d)(1)—29 U.S.C. § 1056(d)(1)—prohibits alienation or assignment of *pension* benefit plans.][11] The absence of a similar provision relating to *welfare* benefit plans (at issue in this matter) is not aimless "congressional silence," as the Oregon Court concluded, but is a deliberate indication that garnishment of ERISA *welfare* benefit plans was contemplated.

While this Court in *Mackey* recognized that "state-law methods for *collecting* money judgments must, as a general matter, remain undisturbed by ERISA" [486 U.S. at 834 (emphasis added)], there is nothing in *Mackey* to support the view of the Oregon Court that, because Congress did not expressly provide for a procedural mechanism in ERISA to collect judgments, Congress thereby intended to express acceptance of "the practice of refusing garnishment" of the benefits of an ERISA plan. *Standard Ins. Co. v. Saklad*, 849 P.2d at 1152.

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[11] Thus, Congress was not silent on this issue. As this Court noted in *Mackey*:

> Once Congress was sufficiently aware of the prospect that ERISA plan benefits could be attached and/or garnisheed—as evidenced by its adoption of § 206(d)(1)—Congress' decision to remain silent concerning the attachment or garnishment of ERISA welfare plan benefits "acknowledged and accepted the practice, rather than prohibiting it." *Alessi v Raybestos-Manhattan, Inc.* [*supra*].

486 U.S. at 837.

Congress did not silently "acquiesce" to the garnishment of ERISA welfare benefit plans, as the Oregon Court erroneously suggested. Instead, as this Court noted in *Mackey*, Congress deferred to state law "to provide methods for *collecting* judgments." 486 U.S. at 834 (emphasis added).

4.

The Oregon Court erred in ruling that ERISA mandates uniform treatment of ERISA plans but not ERISA benefits, and also in ruling that Congress did not intend for there to be uniformity of garnishment procedures from state to state.

The Oregon Court erroneously rejected preemption of Oregon's anti-garnishment law by ERISA based on a supposed distinction the Court drew between ERISA *plans* and ERISA plan *benefits*. *Standard Ins. Co. v. Saklad*, 849 P.2d at 1152. In that regard, the Court erroneously relied on this Court's decision in *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1 (1987).

In *Fort Halifax*, this Court held that a Maine law requiring a one-time severance payment to employees as a result of a plant closing was not preempted by ERISA. The reason that the state law was not preempted by ERISA was that the subject of that law was not an employee welfare benefit plan; it was merely an employee benefit:

> We hold that the Maine statute is not pre-empted by ERISA . . . because the statute neither establishes, nor requires an employer to maintain, an employee welfare benefit "plan" under that federal statute.

482 U.S. at 6 (footnote omitted). Thus, this Court drew a distinction between an ERISA "plan" (with its accompanying benefits) and employee "benefits" not arising from an ERISA plan.

The Oregon Court incorrectly characterized the nature of Standard's argument as focusing on ERISA *benefits*. Standard's argument is *not* based on the premise that Oregon's anti-garnishment law relates to a "benefit" but that it relates to an employee welfare benefit *plan*. While the actual garnishment in this matter also would relate to Saklad's employee welfare *benefits*, it is the inability of Standard to garnish under the anti-garnishment law that "relates to" the defrauded ERISA welfare benefit *plan* in a number of important ways, as discussed above. It is *not* the effect on the "benefits" that is at issue and requires preemption, it is the impact on ERISA employee welfare benefit *plans* if they are unable to garnish and be garnished.

Thus, the Oregon Court erroneously assumed that Standard is arguing that Oregon's anti-garnishment law is preempted because of its impact on the benefits that Standard is attempting to garnish. Standard consistently has argued that Oregon's anti-garnishment law is preempted because it relates both to ERISA plans (the defrauded plan and the plan being garnished) and to employee welfare benefit plans in general, not just to the benefits that are being garnished.

The discussion in *Fort Halifax* about the difference between a "plan" and "benefits" is not applicable to this matter because in this matter an ERISA plan *is* affected; the defrauded ERISA plan is affected by not being able to garnish and thus recoup its plan assets fraudulently obtained by Saklad, the current beneficiary of Standard's other ERISA plan. *Fort Halifax* stands for the proposition that if there is no ERISA plan, there is no preemption. However, if an ERISA plan does exist, then any benefits that are affected by the anti-garnishment law (which benefits would not exist absent the plan) are part of the ERISA plan and thus governed by ERISA. Thus,

while *Fort Halifax* stands for the proposition that not all state laws relating to employee benefits are preempted by ERISA, all employee benefits arising under an ERISA plan *are* governed by ERISA exclusively, and any state laws purporting to regulate them are preempted. *Fort Halifax*, 482 U.S. at 14 n. 8.

The Oregon Court simply was wrong in concluding that, based on an erroneous interpretation of ERISA's preemption provision, "[w]hether or not a check is garnished after administrative procedures are complete has nothing to do with a 'plan' " governed by ERISA. *Standard Ins. Co. v. Saklad*, 849 P.2d at 1152. The reasoning of the court in *Greany v. Western Farm Bureau Life Ins. Co.*, 973 F.2d 812 (9th Cir. 1992), is instructive because the court rejected a benefit-plan distinction, *i.e.*, the court rejected an argument that a conversion policy and the facts surrounding its processing after an employee terminated his employment constituted merely an employee *benefit* because the employee was no longer covered under the employee welfare benefit *plan*. *Id.* at 817. Such a distinction is meaningless, as the court in *Greany* ruled, because the conversion policy related to the plan in that the "opportunity to convert the group plan to an individual policy is a benefit provided pursuant to the group plan." *Id.* Because the individual conversion benefits are part of an ERISA plan, the court in *Greany* correctly concluded that the benefits are governed by ERISA, and any state law claims therefore are preempted. *Id.*[12]

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[12] *See* Standard's Petition for Writ of Certiorari, pp. 22-24, where Standard discusses this issue and a conflict between the Oregon Court's ruling in this regard and a recent decision of the Tenth Circuit in *Guidry v. Sheet Metal Workers Int'l. Assoc., Local No. 9, supra*, where that court rejected a similar distinction.

Similarly, in this matter the ERISA plan benefits that the defrauded ERISA plan is attempting to garnish do not cease being part of an employee welfare benefit plan after the check is issued, as they are payable due to the existence of the ERISA plan and pursuant to its terms. The Oregon Court, however, erroneously focused on the effect of the actual garnishment on the beneficiary's benefits, not upon the effect of the inability of the defrauded ERISA plan to garnish another ERISA plan and the effect on other ERISA plans in general.

CONCLUSION

The decision of the Oregon Court that Oregon's anti-garnishment law prohibits Standard from collecting on a judgment in Oregon that was lawfully obtained under ERISA's exclusive civil enforcement provisions is contrary to and inconsistent with decisions of this Court that recognize the extremely broad preemptive reach of ERISA. That decision will thwart the legal responsibility of a fiduciary of a defrauded ERISA plan to recoup losses due to fraud committed by a plan beneficiary. That decision also creates a risk of undermining the uniform federal regulation of ERISA plans mandated by ERISA and re-

peatedly recognized by this Court. Therefore, this Court should grant certiorari and reverse that decision.

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Respectfully submitted,

I. FRANKLIN HUNSAKER
Counsel of Record
CHRYS A. MARTIN
BULLIVANT, HOUSER, BAILEY,
PENDERGRASS & HOFFMAN

Attorneys for Movants and *Amici Curiae*
American Council of Life Insurance and
Defense Research Institute

RICHARD E. BARNSBACK
PHILLIP E. STANO
AMERICAN COUNCIL OF LIFE INSURANCE

Of Counsel for Movant and *Amicus Curiae*
American Council of Life Insurance

JOHN H. HOLMES
HOLMES, FOLAWN & RICKLES

Of Counsel for Movant and *Amicus Curiae*
Defense Research Institute